Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1997

No.

KAREN DERZACK AND MICHAEL DERZACK,

Petitioners,

v.

ALLEGHENY COUNTY CHILDREN
AND YOUTH SERVICES,

Respondent

On Petition for Writ of Certiorari to the
Supreme Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Did it violate due process of law to order the withdrawal of Petitioners' Adoption Petition and Report of Intermediary upon motion of the adverse party and the Dismissal of Petitioners' Report of Intention to Adopt without a hearing, proper notice, consent or any other safeguard of due process?

PARTIES TO THE PROCEEDING

A list of parties to the proceeding in the Supreme Court of Pennsylvania is as follows:

Karen Derzack and Michael Derzack, Petitioners
c/o Kathleen A. Cribbins, Esq.
710 Fifth Avenue - Suite 2000
Pittsburgh, PA 15219

Allegheny County Children & Youth Services
933 Penn Avenue - Fifth Floor
Pittsburgh, PA 15222

Byron & Byrae Griffin
c/o Georgene Siroky, Esq.
Legal Aid for Children
900 Sarah Street - Suite 205
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OPINIONS BELOW

The Supreme Court of Pennsylvania filed no opinion in this case. It did issue an Order on November 25, 1997 denying Petitioners' Petition for Allowance of Appeal (Appendix 1A). Said Allowance of Appeal was filed from the Order of the Superior Court of Pennsylvania entered on April 23, 1997 (Appendix 2A) granting Respondent's Motion to Quash. No opinion was filed by the Superior Court.. The Opinion of the Hon. Joseph A. Jaffe of the Court of Common Pleas of Allegheny County is filed at Appendix 3A.

JURISDICTION

On November 25, 1997, the Supreme Court of Pennsylvania denied allowance of appeal from the decision of the Superior Court of Pennsylvania. This Petition for a Writ of Certiorari was filed within ninety (90) days of the decision of the Pennsylvania Supreme Court. This Honorable Court's jurisdiction is invoked under 28 U.S.C. Section 2106.

STATEMENT OF THE CASE

Byrae Lafay Griffin was born on July 30, 1991. Her younger brother, Byron Todd Griffin, was born on July 15, 1992. Both children are African-Americans. They were born addicted to drugs.

Byron was adjudicated dependent after his mother, LaShawn Jeffrey, abandoned him following his birth. At the age of six days, he was placed in the home of Michael and Karen Derzack, a white foster care family with Family Services of Western Pennsylvania (hereinafter "the Derzacks"). Byron stayed with the Derzacks until, in December of 1992, the Derzacks conveyed to Allegheny County Children and Youth Services (hereinafter "CYS") their desire to adopt Byron. CYS promptly notified the Derzacks that Byron would be removed from their home due to a formal transracial placement policy banning the "displacement" of African American children in white homes.

On October 6, 1994, the trial court placed both Byrae and Byron with the Derzacks as prospective adoptive parents. In a subsequent order, the trial court terminated Ms. Jeffrey's parental rights.

In 1995, CYS filed contempt petitions against the Derzacks alleging that the Derzacks had interfered with court ordered visitation, had failed to permit announced and unannounced visits of their home by CYS; had taken Byrae and Byron out of the jurisdiction without permission; had failed to correct errors on their application to adopt Byrae and Byron and had violated the court's gag order.

A hearing on the CYS contempt petitions was held before a court *en banc* on December 13, 1995. The court took the matter under advisement.

On January 17, 1996 the court announced its decision to remove Byrae and Byron from the Derzacks' care, based on testimony taken on December 13, 1995 and January 17, 1996, at the conclusion of the hearing.

The Derzacks appealed the January 17, 1996 order of court and lost in the Pennsylvania courts and a Petition for Writ of Certiorari is pending before this Honorable Court at No. 97-1105.

On August 27, 1996, Allegheny County Children and Youth Services presented its Motion to Withdraw Adoption Petition and Report of Intermediary and to Dismiss Report of Intention to Adopt before the Honorable Joseph A. Jaffe (Appendix 25A). On that date, the Honorable Joseph A. Jaffe entered an order withdrawing the Adoption Petition and Report of the Intermediary and dismissing with prejudice the Report of Intention to Adopt filed by the Derzacks. (See Appendix 33A and Appendix 40A - 70A.)

Exceptions to the August 27, 1996 Order of Court were filed in a timely fashion by the Derzacks. See Appendix 34A.

On October 7, 1996, by Order of the Court *En Banc* of the Court of Common Pleas of Allegheny

County, the Exceptions to the August 27, 1996 Order of Court were dismissed. Petitioners filed a Concise Statement of the Matters to be Complained of on Appeal. (See Appendix 37A.)

A subsequent appeal to the Superior Court of Pennsylvania raised the issue of the violation of due process and said appeal was quashed. See Brief of Appellant, Questions Presented for Review, at Appendix 71A.

The Derzacks' Petition for Allowance of Appeal to the Supreme Court of Pennsylvania was denied on November 25, 1997.

After loss of their appeal in the Pennsylvania Courts, Petitioners timely filed this Petition for Writ of Certiorari.

REASON FOR GRANTING THE WRIT

No person can be deprived of a property or liberty interest absent procedural due process. Morrissey v.

Brewer, 408 U.S. 471, 92 S.Ct. 2593 (1975). The courts have held procedural due process to be an absolute right. Carey v. Piphus, 435 U.S. 247, 98 S.Ct. 1042, 1053 (1978); Bradley v. Pittsburgh Board of Public Education, 913 F.2d 1064, 1077 (3d Cir. 1990).

The Derzacks became prospective adoptive parents following the October 6, 1994 Order of Court placing the subject minor children with them. By encouraging the type of long term parent-child relationships normally expected of biological families, the state has triggered due process protections. Santosky v. Kramer, 455 U.S. 745, 102 S.Ct. 1388 (1982) (recognizing that parents possess a fundamental liberty interest in the care and custody of their children that is protected by the Due Process Clause of the Fourteenth Amendment); Walker v. Johnson, 891 F.Supp. 1040 (M.D. Pa. 1955).

Fundamental fairness would require a hearing on the adoption petition. It is noteworthy that The Superior

Court of Pennsylvania, in its opinion on the Derzacks' appeals at In Re Griffin, 690 A.2d 1192 (1997) rejected the argument that the Derzacks lacked standing to appeal, finding instead that the Derzacks, as propsective adoptive parents, had standing to pursue their appeal

The subject order of court serves to deny the Derzacks any opportunity to be heard on their adoption pleadings, and thus violates their due process rights under the United States Constitution. Morrissey v. Brewer, supra.

Additionally, the subject order of court allows for the dismissal or withdrawal of the pleadings of one party upon motion of the adverse party without any procedural safeguards, a situation virtually unheard of in the law. See, e.g. Rule 12, Federal Rules of Civil Procedure.

It is extremely difficult to accomplish even the striking or dismissal of another's claims or pleadings absent testimony. It is a clear violation of due process of law to allow CYS and the County Law Department to

withdraw the pleadings of the Derzacks, who are, here and in other forums, parties adverse to the County, and are the Petitioners on the Adoption Petition.

Further, the subject order of court is violative of Pennsylvania law at 23 Pa.C.S.A. §2721-2724 which provides for a hearing on an adoption petition with necessary testimony and investigation.

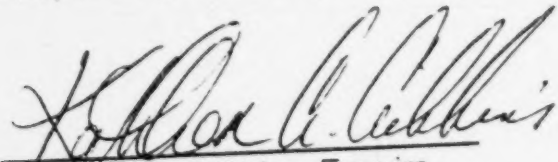
A short circuiting of the normal procedure for adoption cases served to deny the Derzacks due process of law.

Due process demands a meaningful opportunity to be heard. Armstrong v. Mango, 380 U.S. 545, 85 S.Ct. 1187 (1965). Where such a meaningful opportunity to be heard is lacking, due process is violated and the resulting order is unconstitutional.

CONCLUSION

It is respectfully requested that this Honorable Court grant review as the Petitioners were denied due process of law.

Respectfully submitted,



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